

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

GAUTHAMI CHIKKAM,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-08-353-D
)	
MICHAEL B. MUKASEY, United States)	
Attorney General, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Before the Court is Plaintiff's Motion to Set Aside Default Judgment [Doc. No. 10], filed October 2, 2008, pursuant to the Fed. R. Civ. P. 60. Although Plaintiff purports to seek relief from "a final default judgment," the case actually was dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m) on September 10, 2008, due to Plaintiff's failure to serve the United States in a timely manner and failure to respond to a prior order directing Plaintiff to show cause why the case should not be dismissed. *See* Order of Dismissal [Doc. No. 8]; Order to Show Cause [Doc. No. 7].

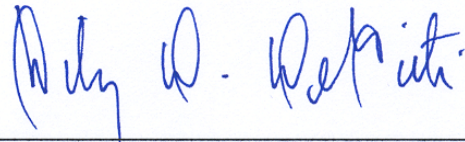
In the Motion, Plaintiff explains the lack of response to the show cause order as caused by counsel's failure to receive notice of the electronic filing of the order. Plaintiff also suggests that counsel was unaware of any defect in service on the United States. Plaintiff states that counsel has taken steps to insure receipt of electronic filings in the future. For relief, Plaintiff requests that the Court vacate the dismissal and allow additional time to comply with the show cause order.

Accepting the representations of Plaintiff's counsel contained in the Motion, the Court finds Plaintiff should be relieved of the Order of Dismissal pursuant to Fed. R. Civ. P. 60(b)(1) due to mistake, inadvertence, surprise, or excusable neglect. Although Plaintiff does not address a basis of the dismissal – untimely service on the United States – the Court finds that Plaintiff could not

reasonably be expected to correct any defect in service without notice. Accordingly, the Court finds good cause for relieving Plaintiff of the dismissal caused, in part, by a failure to respond to the show cause order. *See Yapp v. Excel Corp.*, 186 F.3d 1222, 1231 (10th Cir. 1999) (“the kinds of mistakes remediable under a Rule 60(b)(1) motion are litigation mistakes that a party could not have protected against”).

IT IS THEREFORE ORDERED that Plaintiff’s Motion [Doc. No. 10] is GRANTED. The Order of Dismissal is VACATED. The Clerk shall reopen the case, and Plaintiff shall comply with the show cause order not later than October 17, 2008.

IT IS SO ORDERED this 10th day of October, 2008.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE